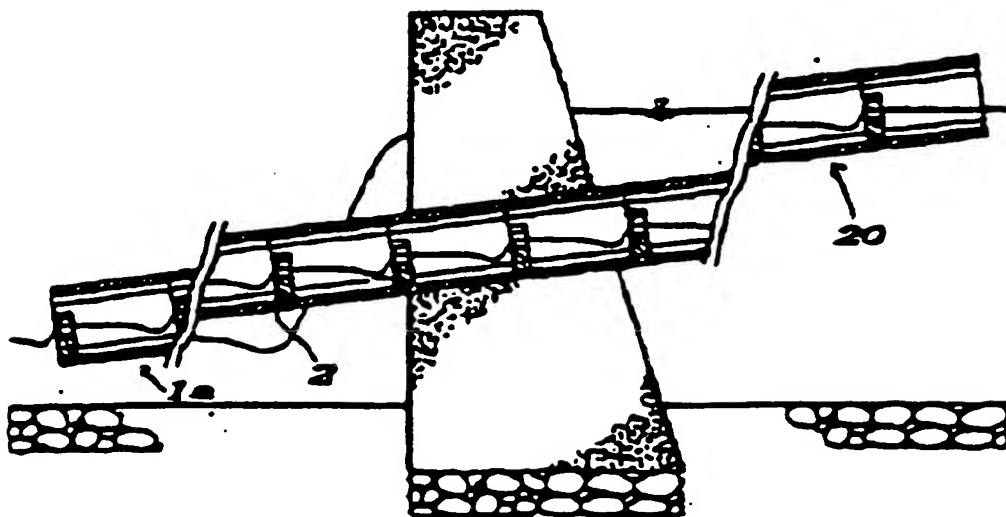


REMARKS

Claim 2 has been amended for the purpose of providing an antecedent basis for the expression "the first dam" appearing in line 2 of claim 2.

The Examiner is asked to reconsider and withdraw the rejection of claim 1 as being anticipated by Japanese Patent Application JP 11315528. Claim 1 specifies that the bottom of the fish diversion channel follows the grade of the ground. This feature is clearly shown in Figs. 2 – 4 of the drawing. Japanese Patent Application JP 11315528 clearly shows the bottom of a channel elevated above the bottom of the river. See Fig. 15 of the application. Also, claim 1 specifies that the inner side wall of the channel has a top that "in its extent along side the reservoir is above the water level in the reservoir." This is also clearly shown by Figs. 1 – 3 of the application drawing. In contrast, Fig. 15 of Japanese Application JP 11315528 shows a migratory fish channel having a bottom that is elevated well above the bottom of the reservoir. An enlarged copy of Fig. 15 of the Japanese application is reproduced below:

【図15】



At the pictured location, the channel bottom does not substantially follow the grade of the ground but rather is spaced vertically a considerable distance above the grade of the ground. It is very well established, anticipation requires the presence in a single prior art disclosure of all elements of a claimed invention arranged as in the claim. *Structural Rubber Products v Park Rubber Co.*, 749 F2d 707, 223 USPQ 1264 (Fed. Cir. 1984). Here, there is clearly no anticipation for the reasons set forth above.

The Examiner is also asked to reconsider and withdraw the rejection of claims 2 -6 as being obvious from Japanese Patent Application JP 11315528. The rejection of claims 2 – 6 is subject to the same deficiencies as the rejection of claim 1 discussed above. Fig. 17 in the Japanese application is a cross sectional view through the trough that is shown by Fig. 16. The wall 17 is not the inner wall of a channel that borders a reservoir that extends upstream from a dam.

With respect to the claimed feature of a series of dams in a river, related in a particular manner by the fish diversion channel of the present invention, the Examiner must find a specific teaching in the prior art in support of his rejection. “Obviousness” is a legal conclusion based on evidence. In order for the rejection to be proper, the evidence must show that each of the claimed features exists in the prior art and in addition there is evidence of motivation for one skilled in the art to make the claimed combination. Here, the evidence of the claimed fish diversion channel and the evidence of the specific construction of a series of dams in a river and a specific construction of a fish diversion channel that extends along side of each of the dams, have not been shown to exist in the prior art. For that reason, claims 2 – 9 are patentable.

Applicant requests that the Examiner reconsider and withdraw the rejection of claims 7 and 8 as being obvious from Japanese Patent Application JP 11315528 in combination with Robinson 6,543,968. Regardless of the teachings of Robinson 6,543,698, the Examiner has not produced any prior art showing the claim construction of the fish diversionary channel. Japanese Application JP 11315528 does not show a fish diversion channel having a bottom that follows the bottom of a river section below a dam and a reservoir above the dam. It does not show a fish diversion channel having an inner side wall which above the dam extends upwardly from the bottom of the reservoir to a top that is above the surface of the reservoir throughout the full extent of the channel along side the reservoir.

Robinson 6,543,968 does not relate to either a dam or a fish diversion channel for carrying fish upstream passed one or more dams. There is absolutely nothing in Robinson 6,543,968 that would motivate a person of ordinary skill in the art to either construct a fish diversion channel like the one that is claimed or provide such channel with one or two extendable/retractable gates for changing the cross sectional area of the channel.

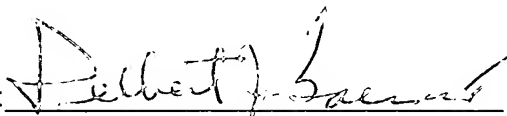
The structure disclosed by Japanese Application JP 11315528 A is basically only a fish ladder for transporting fish around a dam or a small section of a river. Its use is to bypass dams or fast flowing sections of a river where there is substantial differences in water levels. It doesn't allow bypassing slow flowing or stagnate reservoirs with cooler flowing water. It does not provide an additional natural spawning ground. The last two functions are performed by applicant's diversions system in which the diversion channel follows the natural grade of the ground along side the reservoir.

If the Examiner chooses to repeat the rejections, he is asked to specifically refer to the portion of Japanese Application JP 11315528 that teaches the claimed positioning of a bottom of the channel and the claimed construction of the inner side wall of the channel.

For the reasons set forth above, it is submitted that claims 1 – 8 are patentable over the prior art. Accordingly, early reconsideration and allowance of the application are requested.

Respectively submitted,

Robert E. Davis

By: 

Delbert J. Barnard
Attorney for Applicant
Registration No. 20,515
(206) 381-3100

DJB/kb